

FILED

NOV 20 2007

NOT FOR PUBLICATION
UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

CATHY A. CATTERSON, CLERK
U.S. COURT OF APPEALS

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

HECTOR GUERRA-FION,

Defendant - Appellant.

No. 06-10692

D.C. No. CR-06-00003-PMP

MEMORANDUM^{*}

Appeal from the United States District Court
for the District of Nevada
Philip M. Pro, District Judge, Presiding

Submitted October 22, 2007^{**}

Before: B. FLETCHER, WARDLAW and IKUTA, Circuit Judges.

Hector Guerra-Fion appeals from the 57-month sentence imposed following his guilty-plea conviction for unlawful reentry, in violation of 8 U.S.C. § 1326.

We have jurisdiction pursuant to 28 U.S.C. § 1291, and we affirm.

^{*} This disposition is not appropriate for publication and is not precedent except as provided by 9th Cir. R. 36-3.

^{**} This panel unanimously finds this case suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

Guerra-Fion contends that the district court erred by applying a sentencing enhancement for a prior conviction when calculating his advisory Sentencing Guidelines range because the prior conviction was obtained in violation of his right to counsel. We conclude that Guerra-Fion has not presented evidence sufficient to overcome the presumption that his waiver of counsel was valid. *See United States v. Allen*, 153 F.3d 1037, 1041 (9th Cir. 1998).

AFFIRMED.